

# Exhibit A

**From:** [Monica McCarroll](#)  
**To:** [Peterson, Ashley P.](#); [Noonan, Jeanne E.](#); [McFarland, Robert W.](#); [Hatch, Benjamin L.](#); [Kynes, Cameron G.](#); [Justus, J. Brent](#)  
**Cc:** [alan.wingfield\\_troutmansanders.com](#); [michael.lacy\\_troutmansanders.com](#); [liz.flowers@troutmansanders.com](#); [jchapman@cwm-law.com](#); [wrsnow@cwm-law.com](#); [ddavenport@cwm-law.com](#); [dhartnett@cwm-law.com](#); [Hugh Fain](#); [Connell Mullins](#); [wespivey@kaufcan.com](#); [cibelote@kaufcan.com](#); [John Erbach](#)  
**Bcc:** [Norfolk Southern CSX Transportation v Norfolk Southern 286 007 3 External 286 007 <{F39729}.Active@ef.redgrave.local>](#)  
**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order [IWOV-Active.FID39729]  
**Date:** Friday, November 1, 2019 3:32:15 PM  
**Attachments:** [CSXT v. NS - Draft ESI Order.DOCX](#)  
[image005.png](#)

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Counsel,

I am attaching NSR's response to CSXT's proposed edits to the ESI Order. The remaining issues relate to date range (3.a) and custodians (3.b). I have tweaked the language again in an effort to accomplish our mutual goal of reasonable and proportionate discovery for all parties, while also building in some flexibility to modify the agreement to the extent additional information becomes available after the Order is entered.

Please let us know your thoughts and if it makes sense to schedule a brief call early next week to work through any remaining issues.

Regards,  
Monica

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**From:** Monica McCarroll  
**Sent:** Friday, November 01, 2019 9:57 AM  
**To:** Peterson, Ashley P.; Noonan, Jeanne E.; McFarland, Robert W.; Hatch, Benjamin L.; Kynes, Cameron G.; Justus, J. Brent  
**Cc:** [alan.wingfield\\_troutmansanders.com](#); [michael.lacy\\_troutmansanders.com](#); [liz.flowers@troutmansanders.com](#); [jchapman@cwm-law.com](#); [wrsnow@cwm-law.com](#); [ddavenport@cwm-law.com](#); [dhartnett@cwm-law.com](#); [Hugh Fain](#); [Connell Mullins](#); [wespivey@kaufcan.com](#); [cibelote@kaufcan.com](#); [John Erbach](#)  
**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order [IWOV-Active.FID39729]

Ashley,

We are reviewing your comments and plan to revert back soon with our response. In the meantime, per our separate conversation yesterday, your suggestion that we circulate our respective custodian lists next Friday, November 8, in conjunction with the parties' Rule 26(a) disclosures made sense to NSR, but I wanted to circulate to the larger group for consideration. I also agreed with your suggestion that we schedule a meet and confer early the following week to finalize custodian lists, as well as set the timing for the exchange of search terms and privilege logs. To the extent the parties are able to circulate any information about search terms prior to the meet and confer, it would certainly help expedite that conversation. Recognizing there are many calendars involved, if each party could please advise regarding availability for a meet and confer on custodians, search terms and privilege log timing **between 2 and 5pm on Monday, November 11 or Tuesday, November 12**, I would greatly appreciate it.

Regards,  
Monica

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**From:** Peterson, Ashley P. [mailto:APeterson@mcguirewoods.com]  
**Sent:** Wednesday, October 30, 2019 5:43 PM  
**To:** Monica McCarroll; John Erbach; Noonan, Jeanne E.; McFarland, Robert W.; Hatch, Benjamin L.; Kynes, Cameron G.; Justus, J. Brent  
**Cc:** alan.wingfield\_troutmansanders.com; michael.lacy\_troutmansanders.com; liz.flowers@troutmansanders.com; jchapman@cwm-law.com; wrsnow@cwm-law.com; ddavenport@cwm-law.com; dhartnett@cwm-law.com; Hugh Fain; Connell Mullins; wespipey@kaufcan.com; cjbelote@kaufcan.com  
**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order [IWOV-Active.FID39729]

Counsel,

Attached please find CSXT's redlined comments to the ESI Order. As you will see, we accepted most of the changes NSR recently proposed. We also added references to NPBL in a few places—we think it makes sense for the ESI Order to apply equally to all corporate parties.

Please let us know if have any comments or would like to discuss.

Thanks,  
Ashley

**Ashley P. Peterson**

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**McGUIREWOODS**

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**From:** Monica McCarroll <MMcCarroll@redgravellp.com>  
**Sent:** Wednesday, October 23, 2019 5:03 PM  
**To:** John Erbach <jerbach@spottsfain.com>; Noonan, Jeanne E. <jnoonan@mcguirewoods.com>;

McFarland, Robert W. <rmcfarland@mcguirewoods.com>; Hatch, Benjamin L. <BHatch@mcguirewoods.com>; Peterson, Ashley P. <APeterson@mcguirewoods.com>; Kynes, Cameron G. <CKynes@mcguirewoods.com>; Justus, J. Brent <bjustus@mcguirewoods.com>  
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**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order [IWOV-Active.FID39729]

All,

Thank you for your time this afternoon. I believe we made substantial progress on finalizing issues before Friday. To that end, I am attaching a revised draft of the ESI Order that accepts many of the changes proposed by CSXT, and adds some additional language and comments for your review based on our discussion today. Please advise if you have any feedback or comments, or would like to discuss further.

Regards,  
Monica

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**From:** John Erbach [<mailto:jerbach@spottsfain.com>]  
**Sent:** Tuesday, October 22, 2019 11:41 AM  
**To:** 'Noonan, Jeanne E.'; Monica McCarroll; McFarland, Robert W.; Hatch, Benjamin L.; Peterson, Ashley P.; Kynes, Cameron G.; Justus, J. Brent  
**Cc:** alan.wingfield\_troutmansanders.com; michael.lacy\_troutmansanders.com; [liz.flowers@troutmansanders.com](mailto:liz.flowers@troutmansanders.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); Hugh Fain; Connell Mullins; [wespipey@kaufcan.com](mailto:wespipey@kaufcan.com); [cjbelote@kaufcan.com](mailto:cjbelote@kaufcan.com)  
**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order

All,

We are available Wednesday between 1 PM and 4 PM. On behalf of individual defendants Hall, Hurlbut and Merilli, we join in Norfolk Southern's request for more information about how CSXT will run search terms through its "central Location" and seek agreement on how former employees and former NPBL board members will be counted toward the number of non-party, non-expert depositions. Also, attached please find one additional redline concerning Sections 11(a) and 11(b), overlaid with CSXT's previous redlines. Upon reviewing CSXT's redlines, it appears possible to read Section 11 to prohibit individual defendants from reviewing designated material, although we do not

think that was the intention. The change shown in redline in the attached simply makes that clear by inserting a new Section 11(a) before former Section 11(a).

Thanks,  
John

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**From:** Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>  
**Sent:** Tuesday, October 22, 2019 10:06 AM  
**To:** Monica McCarroll <[MMcCarroll@redgravellp.com](mailto:MMcCarroll@redgravellp.com)>; McFarland, Robert W. <[rmcfarland@mcguirewoods.com](mailto:rmcfarland@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>; Kynes, Cameron G. <[CKynes@mcguirewoods.com](mailto:CKynes@mcguirewoods.com)>; Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>  
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**Subject:** [External Sender] RE: CSXT v. NSR et al. - ESI Matters and Protective Order

Monica,

We are available for a meet and confer on Wednesday, any time between 12pm and 3pm, although we have a hard stop at 3, and we are also available after 4pm.

Thank you,  
Jeanne

**Jeanne E. Noonan**

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**From:** Monica McCarroll <[MMcCarroll@redgravellp.com](mailto:MMcCarroll@redgravellp.com)>  
**Sent:** Monday, October 21, 2019 6:25 PM  
**To:** Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; McFarland, Robert W. <[rmcfarland@mcguirewoods.com](mailto:rmcfarland@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>; Kynes, Cameron G. <[CKynes@mcguirewoods.com](mailto:CKynes@mcguirewoods.com)>; Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>  
**Cc:** alan.wingfield\_troutmansanders.com <[alan.wingfield@troutmansanders.com](mailto:alan.wingfield@troutmansanders.com)>; michael.lacy\_troutmansanders.com <[michael.lacy@troutmansanders.com](mailto:michael.lacy@troutmansanders.com)>; [liz.flowers@troutmansanders.com](mailto:liz.flowers@troutmansanders.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [hfain@spottsfain.com](mailto:hfain@spottsfain.com); [cmullins@spottsfain.com](mailto:cmullins@spottsfain.com); jerbach\_spottsfain.com <[jerbach@spottsfain.com](mailto:jerbach@spottsfain.com)>; [wespivey@kaufcan.com](mailto:wespivey@kaufcan.com); [cjbelote@kaufcan.com](mailto:cjbelote@kaufcan.com)  
**Subject:** RE: CSXT v. NSR et al. - ESI Matters and Protective Order [IWOV-Active.FID39729]

Jeanne,

Thank you for your response and the latest turn of the draft orders. NSR would like to discuss some of your edits to the ESI Order in more detail, and also would like to confirm CSXT's responses to the questions raised during and after the Rule 26(f) conference (I have attached my 10/8/19 email for ease of review). NSR requires more information about your client's "central location" for preserving email before agreeing to the proposed edits to the ESI Order. NSR also would like a better understanding of how CSXT proposes to run search terms; specifically, whether it is planning to search its "central location" as suggested in your response below. If that is the case, NSR would like a better understanding of the functionality of the search tool CSXT plans to use, as some in-house tools have known deficiencies that can be accounted for if addressed up front.

We also have not received your proposal as to how to treat Belt Line board members in terms of counting against the list of custodians set forth in the draft ESI Order, or how you propose to treat former employees for purposes of determining whether the parties should ask the Court to increase the number of non-party, non-expert depositions beyond the 5 allowed under the Pretrial Order.

We suggest the parties schedule a brief meet and confer by telephone to determine whether we can resolve these outstanding issues before Friday's conference. Counsel for NSR can be available **Wednesday between 12pm and 4pm**. Hopefully, that window is large enough that we can find a time that works for everyone. Please advise if there is a window that works on your end and we will circulate a dial-in.

Regards,  
Monica

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**From:** Noonan, Jeanne E. [<mailto:jnoonan@mcguirewoods.com>]

**Sent:** Friday, October 18, 2019 4:42 PM

**To:** [cmerritt@cblaw.com](mailto:cmerritt@cblaw.com); [bhill\\_cblaw.com](mailto:bhill_cblaw.com); Belinda Jones; [pcoburn@cblaw.com](mailto:pcoburn@cblaw.com); [alan.wingfield\\_troutmansanders.com](mailto:alan.wingfield_troutmansanders.com); [michael.lacy\\_troutmansanders.com](mailto:michael.lacy_troutmansanders.com); [liz.flowers@troutmansanders.com](mailto:liz.flowers@troutmansanders.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [hfain@spottsfain.com](mailto:hfain@spottsfain.com); [hfain@spottsfain.com](mailto:hfain@spottsfain.com); [cmullins@spottsfain.com](mailto:cmullins@spottsfain.com); [jerbach\\_spottsfain.com](mailto:jerbach_spottsfain.com); [wespivey@kaufcan.com](mailto:wespivey@kaufcan.com); [cjbelote@kaufcan.com](mailto:cjbelote@kaufcan.com); Monica McCarroll

**Cc:** McFarland, Robert W.; Hatch, Benjamin L.; Peterson, Ashley P.; Kynes, Cameron G.; Justus, J. Brent

**Subject:** Re: CSXT v. NSR et al. - ESI Matters and Protective Order



Counsel,

Attached please find our comments and edits in redline to the draft ESI and Protective Orders circulated on October 9, 2019. In full disclosure, we are still waiting for some feedback from our client team, but we wanted to get these to you before the weekend, so that we may have some time before the Rule 16(b) conference to further discuss.

A few points:

- This may go without saying, but in each order, we have gone through and accepted many of Defendants' proposed changes, so those will no longer appear in redline format.
- There are some additions and clean-ups from our end, which we hope will be helpful to both sides and add some clarity to each order. We are happy to discuss these in more detail if necessary.

I also provide the following information in response to Monica's October 8, 2019 email and the questions raised during the Rule 26(f) conference:

Following a discussion with our client, I have a better understanding of CSXT's maintenance of ESI. CSXT may possess emails in multiple locations (for example, if an individual were to save a particular email onto his or her hard drive). However, for purposes of email production, CSXT preserves all of its e-mail data in a central location. This is an accepted, standard practice, and ensures a comprehensive collection of e-mails. E-mails collected from this central location will be produced with "To," "From," "CC" and "BCC" metadata, thereby identifying all individuals who had custody of that email. As the e-mails are stored in a central location, the file path metadata does not contain relevant information, as all e-mails would have basically the same file path; however, subject, date, and time information will be provided in the e-mail metadata.

To clarify, CSXT will agree to provide the custodian, duplicate custodian, and file path of ESI collected from locations other than the central location that contains e-mail data.

With respect to the discovery date range, CSXT is able to identify some documents that date back to January 1, 2007, but cannot yet provide the volume of its data that dates back to 1/1/2007. It is my understanding that once custodians and search terms are identified, it should be able to do so. Perhaps the answer here is for each side to identify the custodians, propose search terms, and then further discuss this particular issue?

Thank you all for your patience.

Best,  
Jeanne

**Jeanne E. Noonan**

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